

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. \_\_\_\_\_

NIKKI IACONO, in her individual )  
capacity, and on behalf of her minor child, )  
ARIANA IACONO, )

Plaintiffs, )

v. )

**COMPLAINT**

DR. EDWARD CROOM, in his )  
individual and official capacities, SHELLY )  
MARSH, in his individual and official )  
capacities, CLINT EAVES, in his )  
individual and official capacities, )  
ANDREA ANDINO, in her individual )  
and official capacities, and the )  
JOHNSTON COUNTY )  
BOARD OF EDUCATION, )

Defendants )

Plaintiffs Nikki Iacono (“Ms. Iacono”) and Ariana Iacono (“Ariana”), complaining of Defendants, Dr. Edward Croom, Shelly Marsh, Clint Eaves, Andrea Andino, and the Johnston County (North Carolina) Board of Education (“School Board”), allege:

1. This is an action alleging violations of the Free Exercise Clause of the First Amendment, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, to the United States Constitution. By refusing to allow an exemption to the student dress code based on a student’s sincere religious beliefs, Defendants have improperly burdened her right to freely exercise her religion, and her mother’s Fourteenth Amendment parental right to direct the religious and educational upbringing of her child. Indeed, Defendants have caused a fourteen-

year-old honor student to miss 19 of the first 28 days of her high school education – and have now banished her to “alternative” school.

2. Defendants’ dress code policy, on its faces, runs afoul of United States Supreme Court precedent forbidding government inquiry into whether a religious belief or practice is required by a particular religion. In addition, Defendants have misapplied their own policy regarding religious exemptions from the student dress code, and have provided a hearing officer who prejudged the matter. Defendants have thus violated Ms. Iacono’s and Ariana’s right to procedural due process.

3. In misapplying the school board’s policy, Defendants have demonstrated a preference for orthodox religions over a lesser-known but well-established unorthodox religion. This violates the Equal Protection Clause of the Fourteenth Amendment.

#### **PARTIES**

4. Ms. Iacono and her daughter, Ariana, are residents of Clayton, Johnston County, North Carolina. Ms. Iacono is a nursing student at Johnston Community College.

5. Ariana is a ninth grade student at Clayton High School (“Clayton High”) in Clayton, Johnston County, North Carolina. She completed middle school at Clayton Middle School, where she was consistently named to the honor roll. Ariana received an award upon completing the eighth grade for maintaining better than a 93 grade average during all three years of middle school. Ariana also distinguished herself in middle school by participating in Math Counts all three years. In September 2008, Ariana was inducted into the National Junior Beta Club, and during the sixth and seventh grades she achieved Academic Banquet by maintaining a 95 grade average. At the end of last school year, she was selected by Clayton Middle to receive

a \$2,000 scholarship to attend Natural Science Camp at Meredith College. She was placed into the Honors science course at Clayton High per a referral from her middle school science teacher.

6. On information and belief, Defendant Dr. Edward Croom (“Superintendent Croom” or “Dr. Croom”) is a resident of Kenly, Johnston County, North Carolina.

7. Dr. Croom is the superintendent of the Johnston County Board of Education. At all relevant times, he was and is acting under color of state law. Dr. Croom is sued in both his individual and his official capacities.

8. As the superintendent of the Johnston County Board of Education, Dr. Croom is responsible for setting and implementing the policies of the Johnston County Board of Education.

9. On information and belief, Defendant Shelly Marsh (“Mr. Marsh”) is a resident of Smithfield, Johnston County, North Carolina.

10. Mr. Marsh is the deputy superintendent of the Johnston County Board of Education. He is sued in both his individual and his official capacities.

11. As the deputy superintendent of the Johnston County Board of Education, Mr. Marsh is responsible for setting and implementing the policies of the Johnston County Board of Education.

12. On information and belief, Defendant Clint Eaves (“Mr. Eaves”) is a resident of Clayton, Johnston County, North Carolina.

13. Mr. Eaves is the principal of Clayton High. At all relevant times, he was and is acting under color of state law. Mr. Eaves is sued in both his individual and his official capacities.

14. As the principal of Clayton High, Mr. Eaves is responsible for setting and implementing the policies of Clayton High, and for implementing the policies of the Johnston County Board of Education.

15. On information and belief, Defendant Andrea Andino (“Ms. Andino”) is a resident of Clayton, Johnston County, North Carolina.

16. Ms. Andino is the assistant principal of Clayton High. Ms. Andino is sued in both her individual and official capacities.

17. As the assistant principal of Clayton High, Ms. Andino is responsible for setting and implementing the policies of Clayton High and for implementing the policies of the Johnston County Board of Education.

18. The Johnston County Board of Education is a body corporate and politic of the State of North Carolina, located in Johnston County, North Carolina. At all relevant times, it was and is acting under color of state law.

19. The Johnston County Board of Education is responsible for setting and implementing the policies of schools within the Johnston County School District, including Clayton High.

#### **JURISDICTION AND VENUE**

20. This action is brought pursuant to 42 U.S.C. § 1983 to remedy the deprivation by Defendants, under color of state law, of rights, privileges and immunities secured to Plaintiffs by the First and Fourteenth Amendments to the United States Constitution.

21. This Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that one or more Defendants reside in the district, and this is the district in which the claim arose.

## **FACTS**

### **Church Membership**

23. Ms. Iacono and Ariana Iacono (“Ariana”) are members of the Church of Body Modification (“the Church”).

24. Ms. Iacono has been a member of the Church since August 2009.

25. Ariana joined the Church, with the support of Ms. Iacono, in August 2010.

26. Upon information and belief, the Church has been in existence within the United States for approximately ten years.

27. The Church was incorporated in the state of Pennsylvania on July 28, 2008.

28. Upon information and belief, there are approximately 3,500 members of the Church in the United States.

29. Members of the Church practice ancient and modern body modification rites, and believe these practices are essential to their spirituality.

30. Members of the Church practice their beliefs both individually and in group settings.

31. There are four ministers affiliated with the Church nationwide. One of these ministers, Richard Ivey (“Reverend Ivey”), lives in Raleigh, North Carolina. He serves as a minister to Ariana and Ms. Iacono.

32. The Church teaches that through body modification, followers of the Church strengthen the connection between their minds, bodies, and souls. In doing so, the followers live as “spiritually complete and healthy individuals.”

33. The Mission Statement of the Church requires that members vow to “share [their] experiences openly and honestly in order to promote growth in mind, body, and soul.”

34. The Mission Statement of the Church also requires members to “share a positive message with everyone [they] encounter, in order to act as positive role models for future generations in the body modification community.”

35. Ariana first expressed her desire to join the Church early in the Summer of 2010.

36. Ariana spent approximately three weeks visiting Ms. Iacono’s family in New York during July and August, during which time she continued to express to Nikki Iacono her desire to join the Church.

37. Nikki Iacono wished to be present for Ariana’s initiation into the Church. So that Nikki Iacono could be present for the rite, they decided to wait until Ariana returned from her trip to New York to formalize Ariana’s Church membership.

38. In August 2010, to join the Church, Ariana pierced her nose. Ariana now wears a small peridot stud in the left side of her nose.

39. Ms. Iacono and Ariana often meet with Reverend Ivey and his family on Sundays for spiritual discussion. They meet for spiritual discussion, and then have lunch together.

40. Ariana sincerely believes that, according to the teachings of the Church, she must wear her nose stud at all times. She has never removed the stud since she received the piercing in August 2010.

#### **Johnston County Board of Education Student Dress Code**

41. Within Section 4000 of Defendant Johnston County Board of Education’s policies is a policy regarding Student Dress and Appearance, numbered Policy Code 4220 (“Dress

Code”). The Dress Code provides that “there shall be no jewelry affixed to a student’s nose, tongue, lips, cheek or eyebrow.”

42. The Dress Code includes Regulation Code 4220-R, which provides for a Request for Reasonable Accommodation for Sincerely Held Religious Belief (the “Exemption”). The Exemption allows the principal to exempt a student from the requirements of the Dress Code if the requirement would impose a “substantial burden on the exercise of a sincerely held religious belief.”

43. The Exemption requires that the principal or other designee perform a three part analysis to determine whether a student will be exempted from the Dress Code. The three determinations that the principal or other designee must make are (1) whether the objection is grounded in religious tenets rather than personal preference; (2) whether the religious beliefs are sincerely held and practiced; and (3) whether compliance with the Dress Code will truly interfere with the exercise of the religious beliefs.

44. The Exemption further states that “the principal or designee shall not attempt to determine whether the religious beliefs are valid but only whether they are central to religious doctrine and sincerely held.”

### **The Iaconos’ Efforts to Defend Their Religion**

45. On August 25, 2010, Ariana Iacono began high school as a freshman at Clayton High.

46. On this same day, Ariana, new to the school, approached Defendant Ms. Andino in the hallway to ask about the location of one of her classrooms.

47. Ms. Andino noticed that Ariana was wearing a stud in her nose, and advised Ariana that she was not allowed to wear the stud at school. Ms. Andino threatened Ariana with an assignment to in-school suspension if she refused to remove the nose stud on that day.

48. Ariana explained that she could not remove the stud at that time for fear of infection. Ms. Andino allowed Ariana to continue to wear the nose stud while attending her classes at that time.

49. On August 26, 2010, Ariana returned to school wearing the nose stud.

50. On the same day, Ms. Iacono met with Mr. Eaves, and explained the religious significance of Ariana's nose stud. Mr. Eaves informed Ms. Iacono that he would conduct an investigation into the Church to determine whether Ariana would be exempted from the Dress Code.

51. During this meeting, Mr. Eaves told Ms. Iacono that Ariana's nose stud "would be treated differently if you were Muslims or Hindus."

52. Ms. Iacono provided the Church's website as well as contact information for Reverend Ivey, to Mr. Eaves.

53. Ariana was allowed to wear her nose stud at school during Mr. Eaves' investigation into the religious practices of the Church. Mr. Eaves provided a handwritten note for Ariana to present to teachers and other administrators at Clayton High, which exempted her from the Dress Code's requirements during the investigation. This note stated "I have spoken with Ariana. Until further notice she is permitted to have the nose piercing."

54. Upon information and belief, Mr. Eaves consulted the Church's website to investigate the Church's practices.

55. Mr. Eaves contacted Ms. Iacono by telephone after their meeting on August 26, 2010 and asked her further questions regarding the Church. Mr. Eaves asked Ms. Iacono when Ariana joined the Church, whether Ariana's nose stud was required by the teachings of their Church, and whether Ms. Iacono had any Church pamphlets he could consult.

56. During this telephone conversation with Ms. Iacono, Mr. Eaves once again stated that Ariana's nose stud would be treated differently if the Iacanos were Hindus or Muslims.

57. On August 30, 2010, Mr. Eaves contacted Ms. Iacono by telephone and informed her that he had made a determination that Ariana's nose piercing was not required by the Church's religious practices. Mr. Eaves informed Ms. Iacono that Ariana would not be allowed to wear the nose stud to school.

58. On August 30, 2010, Reverend Ivey contacted Mr. Eaves by telephone in hopes of clarifying the Church's teachings and practices. Mr. Eaves hung up on Reverend Ivey during this conversation.

59. On September 1, 2010, Ms. Iacono wrote a letter to Mr. Marsh to appeal Mr. Eaves' decision. In this letter, Ms. Iacono outlined her conversations with Mr. Eaves, explained the Church's religious practices, and asked that Ariana be exempted from the Dress Code.

60. On September 1, 2010, Mr. Marsh responded to Ms. Iacono's September 1 letter with an email stating: "Mr. Eves [sic] is following policy. I hope your daughter will too. Your daughter should follow the rules so consequences will not warranted [sic]."

61. Ms. Iacono forwarded Mr. Marsh's email response to Dr. Croom on September 1, 2010, asking to speak with him regarding Mr. Eaves' decision.

62. Dr. Croom responded by informing Ms. Iacono that he had referred the matter to the school board's attorney, Mr. James Lawrence.

63. After Ms. Iacono failed to hear anything further from Dr. Croom or Mr. Lawrence, she went to Dr. Croom's office on September 7, 2010 and asked to see him. At this meeting, Dr. Croom stated that these cases usually do not come out in favor of her Church, and that she would need to refer further questions to Mr. Lawrence.

64. On September 10, 2010, Ms. Iacono and Reverend Ivey met with Mr. Lawrence, who informed them that Dr. Croom would have the final determination over whether Ariana was entitled to an exemption from the Dress Code. Mr. Lawrence informed them at this meeting that there was no appeal of Dr. Croom's decision.

#### **Ariana's Suspensions from Clayton High School**

65. On September 7, 2010, Ariana returned to Clayton High with the nose stud in place. Mr. Eaves cited Ariana for violating the Dress Code; for this first offense, he gave her a written warning. Ms. Iacono was notified of this violation. The notice of violation incorrectly referred to Ariana's nose piercing as a "nose ring." She in fact wears a small peridot stud.

66. Ariana returned to school on September 8, 2010, wearing the nose stud. On this date, Mr. Troy Anderson, a teacher at Clayton High, referred Ariana to Ms. Andino for a violation of the Dress Code. Ms. Andino suspended Ariana for one day for a second violation of the Dress Code. Ariana was allowed to return to school on September 9, 2010. The suspension notice incorrectly referred to Ariana's nose stud as a "nose ring."

67. On September 9, 2010, Ariana returned to Clayton High with her nose stud. She was again referred by Mr. Anderson to Ms. Andrino for a violation of the Dress Code. Ms. Andrino suspended Ariana from school for three days for a third violation of the Dress Code. Ariana was allowed to return to school on September 14, 2010. This notice again referred to Ariana's piercing as a "nose ring."

68. Ariana returned to Clayton High on September 14, 2010 with the nose stud in place. She was accompanied by Ms. Iacono. Mr. Eaves refused to allow Ariana to remain in school with the nose stud. He suspended Ariana for five days for a fourth violation of the Dress Code. The suspension notice referred to Ariana's piercing as a "nose ring." Mr. Eaves informed Ms. Iacono that, if Ariana returned on September 21, 2010 with the nose stud, he would suspend her for ten days and refer her to an alternative school.

69. Katherine Parker, Legal Director of the American Civil Liberties Union of North Carolina Legal Foundation, contacted Mr. Lawrence on September 15, 2010 asking that Ariana be allowed to return to Clayton High with her nose stud in place.

70. Mr. Lawrence responded to Ms. Parker's request on September 20, 2010, and stated that if Ariana agreed to cover her nose stud during the school day with a bandage or wear a spacer in lieu of her nose stud, she would be allowed to return to Clayton High.

71. Ms. Iacono and Ariana believe it would be against their Church's practices to cover a piercing every day with a Band-Aid. In addition, wearing a Band-Aid on her nose every day for four years would be embarrassing and uncomfortable for Ariana.

72. Ms. Iacono and Ariana feel that wearing a spacer in place of her nose stud would also violate the Church's religious practices. In addition, spacers are made of a porous material that carries bacteria and carcinogens. Wearing a spacer and taking her nose stud out every day would be unhygienic and unhealthy for Ariana.

73. On September 21, 2010 Ariana returned to Clayton High with her nose stud in place.

74. Nikki Iacono accompanied Ariana to Clayton High on September 21, 2010 and again met with Mr. Eaves, asking him to allow Ariana to attend her classes. Instead, Mr. Eaves

suspended Ariana for a fifth violation of the Dress Code. Ariana received a ten-day suspension. The written notice of violation, received on September 23, 2010, recommended long-term suspension and referral to an alternative school placement.

75. On October 4, 2010, Ms. Iacono and Ariana attended a hearing at the Johnston County Schools' central office in Smithfield, North Carolina on an appeal filed through the School Board's due process procedures.

76. Mr. Marsh, who previously emailed Ms. Iacono stating his position against Ariana's nose stud, served as the hearing officer.

77. During the October 4, 2010 hearing, the School Board's lawyer demanded that Ms. Iacono defend her own as well as Ariana's religious beliefs. He asked Ms. Iacono where her Church was located, where members meet, and how many meetings Ariana had attended since joining the Church over the Summer of 2010. Confronting Ms. Iacono with a copy of the Church's Mission Statement and Statement of Faith, the School Board's lawyer asked her to locate specific language requiring all members of the Church to wear nose piercings.

78. Ms. Iacono explained that Ariana's nose stud was required for her faith in the Church, but that other Church members may choose to modify their bodies in different ways. Ms. Iacono also explained that the Church's website makes it clear that body modification rites are "essential" to the spirituality of Church members. Ms. Iacono further explained that she was very upset about Ariana's suspensions and felt that it was awful that the school district was forcing her to choose between her daughter's public education and the family's religion.

79. At the conclusion of the October 4 hearing, while supposedly still deliberating whether to affirm Mr. Eaves' recommendation of long-term suspension or alternative school, Mr. Marsh blurted out that Ariana should report to the South Campus Community School ("South

Campus”) on October 6, 2010. This inadvertent admission revealed that he had already made a determination upholding Mr. Eaves’ recommendation for an alternative school placement.

80. On October 5, 2010, Mr. Marsh in fact upheld Mr. Eaves’ decision, and banished Ariana to South Campus. Mr. Marsh described South Campus as Johnston County’s alternative school for “students who are having difficulty in the regular school program, or in some cases, students who have been recommended for long term suspension.” At South Campus, Ariana would still be barred from wearing nose stud.

**FIRST CLAIM FOR RELIEF  
(Denial of First and Fourteenth Amendment Rights)**

81. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 80.

82. Defendants’ actions in refusing to exempt Ariana from the Dress Code and in suspending her from Clayton High four times were, and continue to be, taken under color of state law as defined in 42 U.S.C. § 1983.

83. Defendants’ Dress Code and actions in refusing to exempt Ariana from the Dress Code constitute an ordinance, regulation, custom, usage, or policy for purposes of 42 U.S.C. § 1983.

84. The Church of Body Modification is a religion entitled to protection under the First Amendment to the United States Constitution.

85. Body modifications such as nose piercings are a central religious practice of the Church.

86. It is Plaintiffs’ sincerely held belief that Ariana must wear her nose stud openly at all times according to the central tenets of the Church.

87. The refusal by Defendants to exempt Ariana from the Dress Code is a burden on Plaintiffs’ First Amendment right to the free exercise of their religion.

88. The refusal by Defendants to exempt Ariana from the Dress Code is also a burden on Ms. Iacono's parental right to direct the religious and educational upbringing of her daughter as guaranteed by the Fourteenth Amendment of the United States Constitution.

89. Plaintiffs have no adequate remedy at law, and unless this Court grants the injunctive relief herein requested, Plaintiffs will be irreparably damaged.

**SECOND CLAIM FOR RELIEF  
(Denial of Procedural Due Process)**

90. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 89.

91. At all times, Plaintiffs were engaged in activities protected by the First and Fourteenth Amendments.

92. Ariana has a property interest in a free public education. Ariana and Ms. Iacono also have a liberty interest in their right to engage in activities protected by the First and Fourteenth Amendments at Clayton High.

93. As a direct and proximate result of Ariana's suspension from Clayton High, Defendants have denied Ariana and Ms. Iacono these property and liberty interests.

94. The acts of Defendants were and are, at all times, executed under the color of state law. The acts of Defendants were and are calculated to deprive, have deprived, and are depriving, Ariana and Ms. Iacono their right to procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution.

95. Defendants' acts of denying Ariana an exemption to the Dress Code and of suspending Ariana from Clayton High based on a misapplication of the Dress Code's exemption policy, summarily denied, and continues to deny, Ariana and Ms. Iacono of their protected property and liberty interests. Prior to depriving them of these property and liberty interests, the Defendants failed to afford Ariana and Ms. Iacono adequate procedural protections.

96. As a direct and proximate result of Defendants' actions, Ariana and Ms. Iacono have been deprived of their property and liberty interests without due process of law.

**THIRD CLAIM FOR RELIEF  
(Denial of Equal Protection)**

97. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 96.

98. As a result of her suspension, Ariana has been intentionally treated differently from others similarly situated without any basis for the difference in treatment.

99. Mr. Eaves' statements that Ariana's nose stud would be treated differently if she and Ms. Iacono were Muslim or Hindu reveal that Defendants are denying Plaintiffs equal protection of the law as guaranteed by the Fourteenth Amendment.

100. Mr. Eaves' interpretation as to what he considers to be a valid religion has not been equally applied to Ariana and Ms. Iacono and other students at Clayton High.

101. The acts of Mr. Eaves were and are, at all times, executed under color of state law. The acts of Mr. Eaves were and are calculated to deprive, have deprived, and are depriving Ariana and Ms. Iacono of their right to equal protection of the law pursuant to the Fourteenth Amendment to the United States Constitution.

102. The acts of Mr. Eaves were and are arbitrary, irrational, and without rational basis. Mr. Eaves' actions have denied, and continue to deny, Ariana and Ms. Iacono equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

103. As a result of Mr. Eaves' actions, Ariana and Ms. Iacono have sustained actual damages and are entitled to obtain appropriate equitable relief under 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Declare Defendants' actions to be in violation of the First and Fourteenth Amendments to the United States Constitution;
2. Preliminarily and permanently enjoin Defendants from engaging in or continuing any and all practices found by this Court to be unlawful and unconstitutional;
3. Preliminarily and permanently enjoin Defendants from suspending Ariana from Clayton High and refusing to grant an exemption to the Dress Code based on sincerely held religious beliefs;
4. Strike from Ariana's school record all punishment for violation of the Dress Code, and permit her to make up all lost classes and missed school work;
5. Tax the costs of this action, including reasonable attorneys' fees, to Defendants under 42 U.S.C. § 1988; and
6. Award Plaintiffs such other and further relief as the Court may deem just and proper.

This the 6th day of October, 2010.

ELLIS & WINTERS, LLP

      /s/ Jonathan D. Sasser  
Jonathan D. Sasser  
N.C. State Bar No. 10028  
jon.sasser@elliswinters.com  
Post Office Box 33550  
Raleigh, North Carolina 27636  
Telephone: (919) 865-7000  
Facsimile: (919) 865-7010

*Lead Counsel for Plaintiff and Cooperating Attorneys  
for the American Civil Liberties Union of North  
Carolina Legal Foundation*

Katherine Lewis Parker  
N.C. State Bar No. 36263  
Counsel for Plaintiff  
Legal Director, American Civil Liberties Union of  
North Carolina Legal Foundation  
Post Office Box 28004  
Raleigh, North Carolina 27611  
Telephone: (919) 834-3466  
Facsimile: (866) 511-1344  
Email: [acluncklp@nc.rr.com](mailto:acluncklp@nc.rr.com)